

The State Bar of California

Requirements and Procedures Under *Keller v. State Bar of California*; Statement of Expenditures of Mandatory Membership Fees for 2006 and Independent Auditors' Report

Under *Keller v. State Bar of California*, 496 U.S. 1 (1990), the State Bar may constitutionally use mandatory membership fees to fund activities germane to the State's interest in regulating the legal profession and improving the quality of legal services; it may not, however, under the First Amendment, use mandatory dues to fund activities of an ideological or political nature which fall outside of those areas of activity. To permit members to gauge the propriety under *Keller* of the annual membership fee that they are charged and must pay, the State Bar prepares a statement of its expenditures of mandatory membership fees using the most recently audited expenses categorized by program areas. See *Keller*, 496 U.S. 17, citing *Teachers v. Hudson*, 475 U.S. 292 (1986).

Members of the State Bar are not required to pay and may deduct five dollars from their annual dues if they do not wish to support legislative activities of the State Bar. Cal. Bus. & Prof. Code § 6140.05. The California Legislature and the Board of Governors of the State Bar have limited the amount that may be spent on State Bar legislative activities to the revenue paid voluntarily by members who do not take the five dollar deduction. Members may also deduct five dollars from the annual dues if they do not wish to support the State Bar's Bar Relations and Elimination of Bias programs; expenses of these programs are similarly restricted by the Board of Governors to voluntary payments by those members not taking the deduction or other voluntary sources. (Instructions for taking the deductions may be found in the 2008 Membership Fee statement, which has been mailed to members.) In addition, the State Bar is prohibited from funding any activities of State Bar Sections with mandatory dues. Cal. Bus. & Prof. Code § 6031.5(a). The annual audit of the State Bar includes an examination of the receipts and expenditures of the State Bar and its Sections to assure compliance with this restriction. Cal. Bus. & Prof. Code § 6145(a). These expenses have been excluded from the mandatory dues charged to members.

After reviewing the Statement of Expenditures of Mandatory Membership Fees for 2006 and Independent Auditors' Report, a member may object and challenge the mandatory membership fees for 2008 on the ground that one or more of the chargeable expense categories are not germane under *Keller* to regulating the legal profession or improving the quality of legal services. A member's challenge must be submitted on the Challenge to Mandatory Membership Fees Form (<http://calbar.ca.gov/calbar/pdfs/members/Keller-Challenge-Form.pdf>). Instructions and procedures are included with the form. A challenger must complete, sign, and submit the Form by the due date for payment of the annual membership fee; **the challenge must be accompanied with timely and full payment of the 2008 membership fee less only the deductions for the State Bar's Legislative Activities and the Bar Relations & Elimination of Bias programs.**

Any challenge and payment must be postmarked or delivered, before the end of business on February 1, 2008, to:

SECRETARY
THE STATE BAR OF CALIFORNIA
180 HOWARD STREET
SAN FRANCISCO, CALIFORNIA 94105-1639

Upon receipt of a timely and proper challenge, the State Bar will place the disputed amount of the challenger's mandatory dues in an interest-bearing escrow account. At its next regularly scheduled meeting following the deadline or as soon thereafter as the matter may be considered, the Board of Governors will decide whether to provide an additional deduction to the challenger or to submit the dispute for expeditious arbitration before an impartial arbitrator. If the dispute is submitted for arbitration, the Board may consolidate all challenges. The challenger(s) and the State Bar by agreement may select an impartial arbitrator. In consolidated challenges, the arbitrator may be selected by an agreement between the State Bar and 75 percent of the challengers. If there is no agreement on an impartial arbitrator within 30 days following the decision to arbitrate, an impartial arbitrator will be appointed by the American Arbitration Association. The arbitration will be heard at the San Francisco office of the State Bar. The proceedings are informal, and the State Bar will have the burden to show that the disputed activities are germane to the State Bar's purposes of regulating the legal profession or improving the quality of legal services. The challenger(s) will be given an opportunity to present their own evidence and to present written arguments in support of their challenge(s). The arbitrator will issue a written decision and any award.

THE STATE BAR OF CALIFORNIA

**Statement of Expenditures of Mandatory Membership
Fees for the Year Ended December 31, 2006
and Independent Auditors' Report**

INDEPENDENT AUDITORS' REPORT

The Board of Governors
The State Bar of California
San Francisco, California

We have audited the accompanying Statement of Expenditures of Mandatory Membership Fees (the "Statement") of The State Bar of California (the "State Bar") for the year ended December 31, 2006. This Statement is the responsibility of the management of the State Bar. Our responsibility is to express an opinion on the Statement based on our audit.

We conducted our audit in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the Statement is free of material misstatement. An audit includes consideration of internal control over financial reporting as a basis for designing procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the State Bar's internal control over financial reporting. Accordingly, we express no such opinion. An audit also includes examining, on a test basis, evidence supporting the amounts and disclosures in the Statement, assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall presentation of the Statement. We believe that our audit provides a reasonable basis for our opinion.

The accompanying Statement was prepared for the purpose of showing the allocation of certain expenses into chargeable and nonchargeable categories as described in Note 2 to the Statement and is not intended to be a complete presentation of the State Bar's revenues and expenses in conformity with accounting principles generally accepted in the United States of America.

In our opinion, such Statement presents fairly, in all material respects, the chargeable and nonchargeable expenses of the State Bar for the year ended December 31, 2006, on the basis of presentation described in Note 2.

This report is intended solely for the information and use of the Board of Governors, management of the State Bar, and members of the State Bar as defined in Note 1 to the Statement, and is not intended to be and should not be used by anyone other than these specified parties.

Deloitte + Touche LLP

May 29, 2007

THE STATE BAR OF CALIFORNIA

STATEMENT OF EXPENDITURES OF MANDATORY MEMBERSHIP FEES YEAR ENDED DECEMBER 31, 2006

	Dollar Amount	Percentage of Total Program Expenses
CHARGEABLE EXPENSES AND RELATED PROGRAM REVENUE (Note 2):		
Discipline	\$ 48,278,108	86.6%
Administration of justice	701,509	1.3%
Administration of the profession	1,293,622	2.3%
Lawyer assistance program	1,973,623	3.5%
Competence	2,099,964	3.8%
Program development	<u>1,402,829</u>	<u>2.5%</u>
Total chargeable program expenses	55,749,655	100.0%
Allocated administrative overhead	8,316,398	
Program revenue	<u>(5,090,383)</u>	
Net chargeable expenses	<u>58,975,670</u>	
NONCHARGEABLE EXPENSES AND RELATED PROGRAM REVENUE (Note 2)	<u>-</u>	
TOTAL NET CHARGEABLE AND NONCHARGEABLE EXPENSES	<u>\$ 58,975,670</u>	

THE STATE BAR OF CALIFORNIA

NOTES TO STATEMENT OF EXPENDITURES OF MANDATORY MEMBERSHIP FEES YEAR ENDED DECEMBER 31, 2006

1. SIGNIFICANT ACCOUNTING POLICIES

Description of Entity - The State Bar of California (the “State Bar”) was first formed as a public corporation by the California State Legislature’s passage of the State Bar Act on July 29, 1927. On November 8, 1960, voters amended the California Constitution to add the State Bar as a constitutional agency in the judicial branch of government. Membership in the State Bar and payment of an annual membership fee are required as a condition of the practice of law in the State of California.

Basis of Accounting - To ensure observance of limitations and restrictions placed on the use of resources available to the State Bar, the accounts of the State Bar are maintained in accordance with the principles of fund accounting. This is the procedure by which resources for various purposes are classified for accounting and reporting purposes into funds established according to their nature and purpose.

Accounting principles generally accepted in the United States of America are applied by the State Bar in conformance with pronouncements of the Governmental Accounting Standards Board (“GASB”). Amounts in the Statement of Expenditures of Mandatory Membership Fees (the “Statement”) were derived from the State Bar’s audited 2006 financial statements.

Use of Estimates - The preparation of the Statement requires management to make estimates and assumptions. Actual results could differ from those estimates. These estimates and assumptions affect the reported amounts of chargeable and nonchargeable expenses during the reporting period.

2. BASIS OF PRESENTATION

The accompanying Statement was prepared for the purpose of showing the allocation of certain expenses into chargeable and nonchargeable categories. Although derived from the State Bar’s audited 2006 financial statements, the Statement is not a substitute for the financial statements, nor is intended to be a complete presentation of the State Bar’s revenues and expenses in conformity with accounting principles generally accepted in the United States of America.

The State Bar Act sets the annual membership fee for members of the State Bar. The amount of the annual membership fee, however, is subject to certain adjustments. The United States Supreme Court in *Keller v. State Bar of California*, 496 U.S. 1 (1990) (“*Keller*”) held that the State Bar could not require California lawyers to pay, as part of the mandatory membership fees, the expense of the State Bar’s political or ideological activity that was not necessarily or reasonably related to the State Bar’s purpose of regulating the legal profession or improving the quality of legal services. The Statement provides an explanation of the mandatory membership fees that each bar member must pay under state law in order to practice law in California. It describes and separates programs and activities that are “chargeable” and “nonchargeable” to members under the *Keller* standard. In calculating the chargeable and nonchargeable expenses, absolute precision is not expected nor required. *Keller*, at 16, citing to procedural requirements outlined in *Chicago Teachers v. Hudson*, 475 U.S. 292, 308 (1986). Expenses included in the Statement are derived from expenses included in the general fund (except program costs funded by filing or other fees), the building fund, client security fund, the lawyers assistance program

fund, and the support and administration fund of the State Bar. Program revenue included in the Statement represents convention income, continuing legal education fees, *CalBar Journal* revenues, and other program revenues that are used to fund the related program expenses.

Since January 1, 2000, amendments to the State Bar Act have provided each member with the option of deducting \$5 from the annual membership fee for lobbying and related activities outside of the parameters established in *Keller*. (Cal. Bus. & Prof. Code §6140.05.) The amendments also have prohibited the State Bar from funding the activities of its Conference of Delegates and Bar sections with mandatory membership fees. (Cal. Bus. & Prof. Code § 6031.5.) In October 2002, the activities of the Conference of Delegates were assumed by an independently incorporated successor entity, the Conference of Delegates of California Bar Associations (“CDCBA”). An amendment to Cal. Bus. & Prof. Code §6031.5 allowed the collection of voluntary fees or donations to the CDCBA. In addition to these changes, in 2001, the Board of Governors provided members the option of an additional \$5 deduction from membership fees for certain other programs. Although reasonable persons may disagree whether some of these programs and activities may be chargeable under the criteria in *Keller*, the Board of Governors has elected to make them optional in their entirety.

Since January 1, 2000, the amount of expenses that the State Bar may incur for legislative activity outside of the parameters of *Keller* was restricted by statute to the total revenue collected from those members electing to pay the \$5 and not take the deduction from the annual membership fee under Cal. Bus. & Prof. Code § 6140.05. Instead of categorizing its programs as within or outside of *Keller*, the State Bar has elected to restrict the expenses of all of its legislative activity to voluntary funds. Similarly, the State Bar has a \$5 deduction for activities under the State Bar’s Bar Relations and Elimination of Bias program and limited its funding to voluntary fees paid by members not taking this deduction. Members who do not wish to support either the State Bar’s legislative activities or its Bar Relations and Elimination of Bias program could deduct the amounts from their annual membership fees. As a result, no part of the mandatory membership fees that a lawyer must pay as a condition of practicing law are used to fund nonchargeable expenses. Therefore, for purposes of the Statement, there are no nonchargeable expenses for mandatory membership fees for the year ended December 31, 2006.

The following is a listing of the major expenses that the State Bar has categorized as chargeable, including a description of the programs or activities performed by category. The classification of a program or expense as chargeable was based on the standards in *Keller* that have been applied to determine whether an expense was necessarily or reasonably incurred for the purpose of regulating the legal profession or improving the quality of legal services available to the people of the State of California. Nonchargeable expenses, as stated above, were funded by voluntary fees paid at the option of members. Determining which State Bar programs and activities are chargeable and nonchargeable requires that judgments be made by the State Bar.

Description of Categories - Chargeable Programs

Discipline – The purpose of the Discipline program is to protect the public by regulating the conduct of California lawyers.

a. *Enforcement*

Receive, review and analyze incoming communications which relate to disciplinary inquiries and complaints against attorneys. Investigate allegations of unethical and unprofessional conduct against attorneys who may have violated provisions of the State Bar Act, Rules of Professional Conduct or other standards of professional conduct. Prosecute attorneys in formal disciplinary hearings in the State Bar Court for violations of the State Bar Act or Rules of Professional Conduct. Activities include, as appropriate, the preparation of formal disciplinary pleadings, conduct of formal and informal discovery, and representation of the State Bar as Trial Examiners in the actual hearings and subsequent review proceedings. (Bus. & Prof. Code §§6043, 6044, 6049, 6077, 6078, 6092.5 et seq.)

\$ 33,879,716

b. *State Bar Court*

Adjudicate formal disciplinary matters resulting in the final imposition of discipline or, in certain instances involving suspension or disbarment, the recommendation of discipline to the California Supreme Court. (Bus. & Prof. Code §§6086.5, 6086.6; Cal. Rules of Court, rules 952, 953, 954.)

7,725,444

c. *Client Security Fund*

Receive, evaluate and process applications made to the Fund by persons who have suffered monetary losses due to dishonest conduct of lawyers and authorize recovery to eligible clients out of funds collected for this purpose. (Bus. & Prof. Code §6140.5.)

5,936,545

d. *Fee Arbitration*

Administer a statewide program for arbitrating fee and cost disputes, and arbitrate those disputes that are not within the jurisdiction of an approved local bar association program. (Bus. & Prof. Code §6200.)

736,403

\$ 48,278,108

Administration of Justice – The purposes of the Administration of Justice program are: (1) to administer the work of the Commission on Judicial Nominees Evaluation (“JNE”) as mandated by Government Code Section 12011.5; (2) to improve the quality and delivery of legal services available to the people of the State; and (3) to aid in the advancement of the science of jurisprudence and improvement of the administration of justice. This program provides specialized professional advice, analysis, studies and information to the judicial, legislative, and executive branches of government. Only JNE is funded by mandatory membership fees. The State Bar funds its other administration of justice activities with the voluntary legislative activities fund or other voluntary fees.

a. *Commission on Judicial Nominees Evaluation*

Evaluate and report to the Governor’s office on the qualifications of judicial candidates whose names have been submitted by the Governor. (Gov. Code §12011.5.)

\$ 701,509

Administration of the Profession – The purposes of the Administration of the Profession program are: (1) maintaining the official membership records and the roll of California attorneys required under Business and Professions Code section 6002.1 and California Rules of Court rule 950.5; (2) administering the family and child support requirements as applied to licensed California lawyers under Welfare and Institutions Code section 11350.6 and California Rules of Court rule 962; (3) administering the “one-stop” member call center to respond to member questions; and (4) administering the requirements of the multi-jurisdiction practice program for the limited practice of law in California by out-of-state attorneys under California Rules of Court rules 964-967.

a. *Administration of the Profession*

Maintain and administer the official membership records and the roll of the of California attorneys as may be necessary or advisable for the purpose of implementing and operating the Program. (Bus. & Prof. Code §§6002.1 ; Cal. Rules of Court, rules 950.2, 962, 964-967; Welfare and Institution Code §§11350.6)

\$ 1,293,622

Lawyer Assistance Program – The purpose of the Lawyer Assistance Program is to provide an alternative to the traditional State Bar disciplinary mechanism, with the goal of the program being the identification and rehabilitation of attorneys with impairment due to abuse of drugs or alcohol, or due to mental illness.

a. *Lawyer Assistance*

Oversee the operation of the Lawyer Assistance Program and adopt reasonable rules and regulations as may be necessary or advisable for the purpose of implementing and operating the Program. (Bus. & Prof. Code §§6231.)

\$ 1,973,623

Competence – The purposes of the Competence program are (1) to provide and promote statewide competence education and (2) to assist others in providing and promoting statewide competence education programs.

a. *Professional Competence, Planning and Development*

Maintain and improve the standards of the legal profession to enhance attorney competence through: (1) promulgating and strengthening professional standards to protect the public; (2) assisting members to comply voluntarily with such standards (e.g., Ethics Hotline, California Compendium on Professional Responsibility, Lawyers Personal Assistance Program); and (3) planning and development of programs to enhance attorney competence. (Bus. & Prof. Code §§ 6076, 6077.)

\$ 2,099,964

Program Development – The purpose of the Program Development program is to provide assistance in the delivery of civil legal services to the public, by working with legal services providers and bar associations to provide a variety of public service programs, including: pro bono legal services programs, lawyer referral services, pro per clinics, community based resolution centers and programs to improve access to the courts. The program also provides limited staff support to the California Young Lawyers’ Association and to the Standing Committee on Delivery of Legal Services.

a. *Legal Services Access*

Provide technical assistance and support to bar associations and legal services programs to develop or expand the availability of legal services to low- and middle-income people in the State. Program development activity focuses on promoting pro bono publico efforts, lawyer referral services (“LRS”) and dispute resolution programs.

\$ 1,342,599

b. *California Young Lawyers Association*

Foster a greater understanding of, and encourage interest among, recently admitted and young lawyers in the programs and activities of the State Bar. Provide a forum for the exchange of ideas in order to assist the State Bar in its programs. (Bus. & Prof. Code §§6013, 6013.4.)

60,230

\$ 1,402,829

Allocated Administrative Overhead – General and administrative expenses are incurred to provide staff and operational support to all programs and activities of the State Bar in the following areas: human resources; finance; financial planning and analysis; data processing operations and development; printing; word processing; purchasing; membership records and certification; member billing and elections; building management; law library and archives; mail; legal counsel and advice; and the formulation, implementation and administration of policies through the Board of Governors and Executive Offices. The “Overhead/Interfund Allocation/Intrafund Allocation” is the share of the administrative costs that are charged to the restricted fund programs for the support provided, using the methodology of the State of California for apportioning and recouping administrative support cost provided by the State’s general fund to its special fund programs.

General and administrative expenses are allocated based upon the ratio of the program’s expenditures to total program expenditures paid by mandatory dues.

Communications	\$ 2,624,012
Executive Offices	3,372,330
General Counsel	3,075,732
Office of Finance	3,141,680
Office of Human Resources	1,304,743
Office of Administrative Support - Los Angeles	1,181,769
Office of Support Services - San Francisco	1,276,148
Information Technology	5,515,017
Office of Real Property (includes lease space cost)	1,667,849
Overhead/Interfund Allocation/Intrafund Allocation	(16,577,585)
Building Fund	<u>1,734,703</u>
Total	<u>\$ 8,316,398</u>

Program Revenue – Program revenue related to chargeable expenses from the General Fund, Building Fund, Client Security Fund, Lawyers Assistance Fund and the Support and Administration Fund of the State Bar.

CalBar Journal revenue	\$ 1,292,226
Seminar/workshop revenue	5,007
Continuing legal education fees	390,789
Other	2,447,043
Rental income - building	<u>955,318</u>
Total	<u>\$ 5,090,383</u>

3. OPTIONAL DEDUCTIONS

The State Bar sets an amount up to \$10 may be deducted from the membership fees. This amount includes the \$5 fixed by the California Legislature for legislative and related activities and \$5 fixed by the Board of Governors of the State Bar for the optional programs.

The deduction is allocated to the following activities:

a. Lobbying

Members may deduct the \$5 from the annual membership fee which would otherwise fund legislative proposals that improve the administration of justice, but are outside the parameters of *Keller*. Legislative activity by the State Bar is limited by statute to the amount paid by members who elect not to take the deduction. Bus. & Prof. Code §6140.05.

b. Other Optional Programs

Members may deduct the remaining \$5 from the annual membership fee which would otherwise fund the elimination of bias and bar relations programs to eliminate bias in the judicial system and legal profession and to increase participation of attorneys who have been underrepresented in the administration and government of the State Bar's programs and activities, such as women, ethnic minority, gay, lesbian and disabled attorneys, and will not fund the cost of communicating and maintaining relations with local bars and other voluntary associations.

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